

FCC MAIL SECTION

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Federal Communications Commission

DA 97-1775

DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments.
FM Broadcast Stations.
(Vergennes, Vermont, and
Willsboro, New York)

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MM Docket No. 97-185
RM-9080

NOTICE OF PROPOSED RULE MAKING

Adopted: August 13, 1997

Released: August 25, 1997

Comment Date: October 16, 1997

Reply Comment Date: October 31, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Watertown Radio Associates Limited Partnership ("petitioner"), licensee of Station WXPS(FM), Channel 224A, Vergennes, Vermont¹, requesting the reallocation of Channel 244A from Vergennes, Vermont, to Willsboro, New York, and the modification of Station WXPS(FM)'s license to specify Willsboro as its community of license.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, 4874 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Willsboro is an incorporated community with a

¹ On October 4, 1996, Lakeside Broadcasting Corporation, previous licensee of Station WXPS-FM, filed a petition for rule making to amend the FM Table of Allotments to change the community of license for Station WXPS-FM to Keeseville, New York. However, Watertown Radio Associates Limited Partnership is now the licensee of Station WXPS-FM, pursuant to the Commission's August 26, 1996, grant of the application for assignment of license from Lakeside Broadcasting to Watertown Radio Associates, which was consummated on October 21, 1996. On April 1, 1997, Watertown Radio filed an amended petition requesting the reallocation of Channel 244A from Vergennes, Vermont, to Willsboro, New York.

population of 1,736 persons² and its own elected government consisting of a town supervisor, town council, highway supervisor, town clerk/tax collector and two justices. Petitioner submits that the community has its own fire department, public schools, library, post office, bank, hospital and health care center. In addition, Willsboro has a variety of retail stores, restaurants, gas stations, churches and community organizations. In sum, petitioner states that the allotment of Channel 244A to Willsboro is in the public interest as it would provide a first local service to Willsboro and will not deprive Vergennes of its sole local aural transmission service.³⁴

3. We believe petitioner's proposal warrants consideration since it could provide Willsboro with its first local FM service. However, since petitioner proposes to relocate Station WXPS-FM's transmitter site, we request that it provide information showing the areas and populations which will receive new service and the areas and populations which will lose existing service if Channel 244A is reallocated to Willsboro. The study should also indicate the number of reception services which are now available within the gain and loss areas.

4. Channel 244A can be allotted to Willsboro, New York, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules with a site restriction of 6.1 kilometers (3.8 miles) northwest imposed to accommodate petitioner's desired site.⁵ In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 244A at Willsboro, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below,

² Population figures taken from the 1990 U.S. Census.

³ Petitioner contends that, based on its engineering analysis, the predicted 70 dBu signal for Station WXPS(FM) will cover approximately 65% of the Burlington, Vermont Urbanized Area, thus has submitted a showing pursuant to Headland, Alabama and Chattahoochee, Florida ("Headland"), 10 FCC Rcd 10352 (1995). See also, Huntington Broadcasting Company v. FCC, 192 R.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (199), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988). However, the staff has conducted its own engineering study and found that Channel 244A at Willsboro, New York, using the coordinates as specified by petitioner, will not place a 70 dBu signal over the Burlington, Vermont Urbanized Area. Therefore, this case does not present the same policy concerns expressed in Headland, *supra*. Nevertheless, an examination of the information submitted using the criteria set forth in KFRC and Tuck supports a finding that Willsboro, New York, is a community for allotment purposes.

⁴ Station WIZN-FM, Channel 294C2, is also licensed to Vergennes, Vermont.

⁵ The coordinates for Channel 244A at Willsboro, New York, are 44-24-11 NL and 73-26-03 WL.

to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Vergennes, Vermont	244A, 294C2	294C2
Willsboro, New York	--	244A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before October 16, 1997, and reply comments on or before October 31, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David G. O'Neil
Rini, Coran & Lancellotta, P.C.
1350 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(Counsel for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary

of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.